

**Remarks**

The present paper is submitted in response to an Office Action dated October 28, 2003. In the Office Action, the Examiner rejected claims 9-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,316,036. Applicants respectfully submit that the rejection of claims 9-24, as printed on the Office Action Summary, and in the Detailed Action beginning on page 2 of the October 28, 2003 Office Action, should also include claims 25-28 as well. Applicants believe that the omission of claims 25-28 was a mistake on the part of the Examiner when preparing the Office Action. Applicants respectfully point out that the Preliminary Amendment filed on November 8, 2001 canceled claims 1-8 and added new claims 9-28. If Applicants are mistaken in this belief, Applicants respectfully request correction by the Examiner.

With respect to the rejection of claims 9-28 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,316,036, Applicants respectfully submit that the attached terminal disclaimer should overcome the rejection thereto.

Applicants respectfully submit that a terminal disclaimer is filed merely to obviate the rejection based on the judicially created doctrine obviousness-type double patenting and is not an admission of the propriety of the rejection. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicants further respectfully submit that the "filing of a terminal disclaimer simply serves the statutory function

of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Id.* at 874, 1394-95.


In view of the foregoing remarks and the attached terminal disclaimer, Applicants respectfully submit that all of the claims in the application are in allowable form and that the application is now in condition for allowance. Applicants further submit that neither further search nor consideration would be necessitated by entry of this response. Therefore, entry is proper and should be effected.

Respectfully submitted,

**McDERMOTT, WILL & EMERY**

Date: January 28, 2004

**McDERMOTT, WILL & EMERY**  
227 West Monroe Street  
Chicago, Illinois 60606-5096  
Telephone: (312) 372-2000

  
\_\_\_\_\_  
Stephen T. Scherrer  
Registration No. 45,080  
Attorney for Applicants